

**BATTLE CREEK CITY PLANNING COMMISSION
MEETING MINUTES
Wednesday, May 25, 2011**

1. Call to Order:

Chairman Preston Hicks, called the meeting to order at 4:00 p.m.

2. Attendance:

Members Present:

Steve Barker	John Godfrey	Chip Spranger
Susan Baldwin (Mayor)	Preston Hicks	
Dan Buscher	William Morris	

Staff Excused: Jan Frantz and John Stetler

Staff Present: Christine Hilton, Planning Supervisor
Jill Steel, Deputy City Attorney
Susan Bedsole, Licensing and Compliance Director
Glenn Perian, Senior Planner
Leona Parrish, Administrative Assistant, Planning Dept.

3. Additions or Deletions to the Agenda: None

- 4. Approval of Minutes:** Meeting Minutes of April 27, 2011.
Commissioner Barker noted word correction on Page 11, 4th paragraph, “fruitation” should have been “fruition”. Commissioner Barker also made note that the meeting minutes were very complete and detailed particularly in light of the public hearing that was held.

**MOTION WAS MADE BY COMMISSIONER GODFREY, SUPPORTED BY
COMMISSIONER BARKER, TO APPROVE THE PLANNING COMMISSION
MEETING MINUTES FOR APRIL 27, 2011 WITH THE NOTED CORRECTION.**

VOTE ON MOTION: ALL IN FAVOR; NONE OPPOSED; MOTION CARRIED.

- 5. Correspondence:** Handed out a revised page #15 for item (B.) Proposed Amendment to Ordinance A-02-11.

6. Public Hearing & Deliberations/Recommendations:

A.) Special Use Permit #S-02-11:

Commissioner Hicks read the petition request from Battle Creek Health System, Mr. Mike Deloof, 300 North Avenue, Battle Creek, MI 49017, requesting a Special Use Permit to allow three parcels to be used for Employee Parking Lots in an “O-1 Office District” as permitted under the Planning and Zoning Code, Chapter 1290, Sec. 1290.01 (b)(13), for property located at 200 College St., parcel #9730-00-021-0; 273 North Ave., Parcel #9730-00-013-0; & 279 North Ave., Parcel #9730-00-015-0.

Public Hearing Opened:

Ms. Christine Hilton, Planning Supervisor outlined the report stating the petitioners are seeking a special use permit to allow the construction of two employee parking lots. The proposed parking lots will require the demolition of three vacant buildings and will provide approximately eighty parking spaces for employees of Battle Creek Health System. Each parking lot will be paved as required by the zoning ordinance, and they are proposing to make improvements to the public alley located between the lots. Stated staff is recommending a six conditions outlined in the staff report that are relative to the fence, lighting, and landscaping that in their opinion will allow the proposed use as a parking lot to be harmonious and appropriate with the surrounding neighborhood, as required in 1290.04(b). The six conditions have been shared with the applicant and they seem to be amendable to their inclusion.

Mr. Michael Deloof, CSM Group, Battle Creek, MI, was present on behalf of Battle Creek Health System; stated the special use permit for the parking lots would allow for growth and provide parking for employees as they have limited space at their existing facility.

Commissioner Barker asked regarding the proposal with the reference to wall lights on the building; not sure which building they are referencing. Mr. Deloof stated Battle Creek Health System has an adjacent building that is currently being used for their Marking Department, which have exterior lights and they would like to add to those lights.

Commissioner Godfrey asked if all three existing buildings will be razed and if there would be fencing around the proposed parking lots. Mr. Deloof stated, yes all three buildings will be razed and would have a screened privacy fence between the duplex next door and the parking lot itself and do not planned to fence more as there is a public alley that runs behind and makes it difficult for traffic circulation.

Commissioner Morris stated he likes the idea of growth and would be in support.

Commissioner Preston Hicks asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION BY COMMISSIONER BARKER, SUPPORTED BY COMMISSIONER GODFREY TO APPROVE THE REQUEST FOR SPECIAL USE PERMIT #S-02-11 TO ALLOW FOR THREE PARCELS TO BE USED FOR EMPLOYEE PARKING LOTS AS SUBMITTED BASED ON THE PROPOSED FINDINGS WITHIN THE STAFF REPORT; TO INCLUDE THE (6) SPECIAL CONDITIONS NOTED.

Discussion:

Commissioner Buscher referenced (page 4) of the staff report regarding the petitioners attendance at the Neighborhood Planning Council meeting held May 18, 2011; asked what the outcome was and if we received any correspondence from NPC#4.

Ms. Susan Bedsole stated she was in attendance for that meeting and noted there was no quorum present for a vote to be taken and that the discussion of the members present was favorable.

Mayor Baldwin asked if these parcels were within a Historic District. Ms. Hilton stated no they are not.

Commissioner Godfrey had a question regarding the fencing of the area and having traffic from the parking lots being put into an office zoned district and was concerned for the safety of the employee's cars. Mr. Deloof stated the hospital had a discussion regarding fencing, but was not able to do because of the layout of the land; noted they currently have a parking lot to the west that does not have a fence and have a shuttle bus that take employees back and forth if they wish or they can choose to walk.

Mayor Baldwin asked Commissioner Barker to state his motion for the record. Commissioner Barker stated his motion as noted above.

A ROLL CALL VOTE WAS TAKEN: NONE OPPOSED; ALL IN FAVOR; MOTION APPROVED.

Commissioner Hicks thanked the petitioner and noted this will now move on to the City Commission for approval and hoped their project goes well.

B.) Amendment to Ordinance #A-02-11:

Commissioner Hicks read the amendment request from the City of Battle Creek requesting amendments to the City of Battle Creek zoning ordinance that identifies statutory references to State Planning and Zoning Enabling Legislation by correcting such references to "Michigan Planning Enabling Act, PA 33 of 2008, as amended" and/or "Michigan Zoning Enabling Act, PA 110 of 2006, as amended" or similar language where applicable, and by bringing it into conformance with and/or correcting zoning provisions as required under said Acts.

Public Hearing Opened:

Ms. Christine Hilton, Planning Supervisor outlined the staff report, provided the history and background noting the proposed amendments to the City of Battle Creek zoning ordinance that identifies statutory references to State Planning and Zoning Enabling Legislation by correcting such references to "Michigan planning Enabling Act, PA 33 of 2008, as amended" and/or "Michigan Zoning enabling Act, PA 110 of 2006, as amended" or similar language where applicable, and by bringing it into conformance with and/or correcting zoning provisions as required under said Acts. Stated it is important to note the changes being proposed are NOT regulatory in nature, but merely clarify existing language in the ordinance as well as incorporate statutory requirements, including correct statute citations, board/commission structure and the public notification process. Stated the deadline for Enabling Act, State of Michigan is to be July 1, 2011. Ms. Hilton asked if the commission would like to now review each ordinance change.

Ms. Jill Steele noted the revision hand-out with items (c) – (h); in addition to Chapter 1290.05 needing to be renumbered as 1290.06. Stated we would need to open the Public Hearing for the record.

Commissioner Hicks Opened the Public Hearing:

Having no one present wishing to speak the Public Hearing was Closed.

Discussion:

Commissioner Barker asked regarding section 1202.2, Planning Commission; cross references, 1202.1 and 1202.4 "membership compensation and other officers". His question is under section 1 it states "the planning commission shall consist of nine members appointed by the Mayor subject of approval by the majority vote of the members of city commission elected and serving". Said they have a City Commissioner who is serving but is appointed.

Commissioner Godfrey stated that particular sentence refers to the position of the City Commission, that they are elected by the public and are serving and is not applied to the appointed commissioner to the planning commission.

Commissioner Barker stated the intent of the statute is not to exclude duly serving City Commissioners throughout the State of Michigan; however the language does clearly indicate that the City Commission is elected and serving. Stated he does not think it can be remedied as it is a State statute and just wanted to point it out.

Commissioner Godfrey asked Deputy Attorney Jill Steele if it were challenged would the City's operating procedure of how to appoint a commissioner in the absence of a resignation; would that appease that particular situation.

Mayor Baldwin stated she believes that elected and serving is actually additive and refers to those who may otherwise be there and would be alright to use instead. Ms. Steele stated she is in agreement with the Mayor's interpretation.

Commissioner Barker asked Ms. Steele if the new by-laws draft were on its way. Ms. Steele stated, yes.

Commissioner Barker asked regarding the preliminary plat procedures and all the materials that followed on that; asked if the verbiage represent any change as far as how they currently have their existing procedures or do they need to make changes on how they are conducting business. Ms. Hilton said the only changes are noted in blue and underlined, that primarily the subsection (c) which addresses the public hearing for the plat that puts the notification on the 15 days prior and the black text is what they follow.

Commissioner Barker asked what the meaning was for the last paragraph on the last page of the Master Plan. Ms. Hilton stated it means that the plat should conform to the Master Plan and that the Planning Commission shall transfer their recommendation to the City Commission for approval or denial whatever the recommendation might be and that the City Commission can overrule the Planning Commission by no less than 2/3 of its membership. Stated the last paragraph outlines the process for the plat when it comes through to City Commission and what the terms need to be to disagree with the recommendation.

Commissioner Barker referenced the larger document for Chapter 1230 (general provisions and definition); asked the definition on Sec 1230.06; "accessory buildings and use", regarding incidental to use of the building and later under "home occupation" is also used when defined home occupation on page 4; said they are worded differently with regard to the word of compensation and consideration and being underlined it is a statutory change. Stated the use is normal for use of premises, but seems to be inconsistent. Stated he appreciated all the work that has been done on these documents and made reference to the four hour seminar a few years ago in the past regarding these changes and was very detailed information incorporating the three statutes in to one which requires a lot of detail work and thanked staff.

Commissioner Hicks asked if it was harmonious with the community and if there was a better term. Ms. Hilton stated the statute lays out different responsibilities of the Planning Commission and the legislative body in the City Commission as far as re-zoning, re-class zoning amendments, etc.; said it

allows for some discretionary decisions which would be site plan review process for any project that wants to be developed, and special land uses. Stated those discretionary decisions have to be tied back to the Master Plan and Ms. Jill Steele, Deputy City Attorney can expand on what the statute states as far as the actual word use "harmonious"; it is discretionary and the statute treats it that way and it is up to the local Planning Commission and City Commission to develop those standards for approval.

Ms. Steele stated she has been researching and in respect to "harmonious" it is a valid term to be used and a valid standard that is going to apply and not really have a definition of it per say as it will be applied differently in different communities and have different meanings to them. Stated that Home Occupation definition has not changed and are trying to enforce as they have been conducted and difficult to enforce; they put definition into the ordinance to take out the word gain. Ms. Steele stated regarding "home occupation", the definition may not have changed in the Zoning Enabling Act; noted she made a decision to have it added because as they are trying to enforce and have had problems with home occupations being conducted and are looking at the past definition "carried on for gain" and found it could cause problems in trying to prosecute a case; the change was intended to take out the word "gain".

Commissioner Barker just wanted to point out that in one paragraph the word "compensation" was used and in the other paragraph "consideration" was used; said it all can be used for gain. Ms. Steele stated they just wanted it added because of the statute.

Mayor Baldwin referenced page 3, section 1230.06 regarding the Home Occupation and the definition of "compensation" and the very next sentence it talks about "consideration"; should that word "compensation" actually be "consideration". Ms. Jill Steele stated the discussion they had some time ago was that "consideration" was more of a legal term of theirs and wanted it in there because it is in the State Statute; but is not going to be a term that is regularly understood by persons.

Mayor stated you would be surprised how wise persons become; and if it is our choice to use the word "compensation" as opposed to what the State Statute requires; maybe Commissioner Barker has a point about consistency.

Commissioner Buscher stated there is a big difference in those two words and needs to be made clear.

Ms. Steele noted they had changed it in Chapter 1292.02 to "consideration", yes she thinks they are right that in (32), "compensation" should be "consideration".

Commissioner Barker stated he feels it is just an editing error and does not think it was a draftsman error; because on Home Occupation the word "compensation" is used and in the next sentence they define "consideration" and "consideration" was not used in the paragraph. Ms. Steele stated it would be consistent with how she changed it in chapter 1292.02. Ms. Hilton asked for clarification; in the first sentence of the definition it should be "consideration". Ms. Steele said yes.

Preston Hicks noted Chapter 1232.06 under "Administration" regarding the 300 ft. provision for notice in section (e)(1)(c); and where it is from. Ms. Hilton stated the 300 ft. buffer requirement is directly right out of the statute.

Commissioner Godfrey said it was interesting as it is out of the State Statute yet the public feels it is a bare minimum, can they take as guidance as minimum and what is the basics; is unacceptable to him.

Commissioner Hicks stated his concern is that says 300 ft. and works because it is consistent; but one petition they go 310 ft. and if they do the next 500 ft. because of whatever, they might get into trouble and not sure what to do about it and wanted to know what the basis was and apparently some people have given some time and thought to this and he can accept it, but is unacceptable to him as a citizen that he may be one house from the 300 ft. and he may not be involved.

Commissioner Buscher stated that the statute requires the petitioner to file a filing fee as a part of that fee they are responsible for notifying those persons within 300 ft. buffer. Asked if there was any way to pass down the cost to the petitioner to send out notification to additional persons as they see fit; or are they precluded from passing down the cost to the petitioner. Ms. Bedsole asked if the petitioner wanted us to do notice of 500 ft. with an addition cost of say \$200 dollars; she does not believe the petitioner would pay the extra fee so persons will be notified or making it mandatory fee increase.

Mr. Buscher asked how those persons notified; certified or general mail. Ms. Hilton stated it is sent first class mail to all property owners and occupants and the problem is you are always one house away from that buffer and would be difficult for us to be fair and consistent to everyone and where do you draw the line.

Commissioner Morris asked if Mr. Perian would provide some opinion; Mr. Perian stated that the notices currently go to persons within 300 ft. and a lot of times we as staff do not know which petition is going to be a hot item and needing to go beyond the 300 ft. radius. Stated like the petitioner today; there was no one attending for that petition and would not know until the meeting when the people show up and feels the fall back is the notification that is published in the paper. Commissioner Buscher stated he knows there is a legal requirement but also a moral thing of doing the right thing and it would not hurt to send out more notices.

Commissioner Godfrey stated that Commissioner Buscher brings up an interesting point and might be one to consider in complying with this; is there any way by ordinance you can say that if the petitioner would like a greater notification that they are billed. Ms. Bedsole stated it would be a voluntary increase.

Ms. Jill Steele stated if the petitioner wanted others to know, they could notify them themselves. Noted if the State Statute requires 300 ft.; we use it and it could be possible that the petitioner might not want more persons. Said that persons at last month's meeting heard about it and came to the meeting that lived outside of the 300 ft. notification and feels that unless there has been some study that gives a good reason it should be say 400 ft. or 500 ft., she recommends against increasing the notices beyond the 300 ft. radius.

Commissioner Godfrey asked where the 300 ft. starts. It was stated the 300 ft. notification is a distance radius going out from around the entire property line boundary. Commissioner Godfrey stated he had not realized it was from all four sides and depending on the area could involve a lot of properties and does seem really fair.

Commissioner Morris stated he is in agreement somewhat with Jill Steele, Deputy City Attorney and think the minimum of 300 ft. is the way it is and if the petitioner wanted to pay the additional cost for more notices to be mailed; they should have that option.

Commissioner Barker asked if the city can pass an ordinance that is greater than what the State Statute states. Ms. Steele noted she has not researched, but we cannot conflict with State Statute and might have arguments both ways for the petitioner. Stated to just randomly come up with a figure without some kind of a study; she can definitely see that an applicant may appeal because of additional persons receiving a notice and they would have a hard time stating where that came from and why it was reasonable for them to increase the notices without any basis.

Commissioner Barker stated based on his experience it comes up periodically because of the controversy in question. Noted for a planning and notice stand point; more is better than less notices and maybe we need to seriously look at increasing the notice provision; first if it can legally be done, and secondly if there is sufficient ground swell to increase the 300 feet.

Ms. Susan Bedsole wanted to add that the petitioner also has the Neighborhood Planning Councils where they encourage citizens to be a part of their neighborhood and provide the applicants information of the NPC meetings and ask them to attend to inform persons of their request in addition to the 300 ft. mailings. Noted for those residents that are engaged and do not necessarily become engaged on a single issue; they are receiving those notices, so there are other vehicles out there by which they make certain notices are fourth coming different from just a direct mailing.

Commissioner Hicks noted it is important the community be aware they are volunteer body who does not receive compensation and that this issue might not be an item for them to decide. Stated the NPC's provide recommendations; asked what about those persons who do not have the means to bring an issue before the Planning Commission and do not have the resources available to them, what are their options. Ms. Bedsole asked if he meant they cannot pay the filing fee, which is difficult because if they waive the fee they are asking the rest of the taxpayers to subsidize them because they only deal with public funds. Stated she did not believe they have ever had that issue, but in other areas they have tried to make accommodations sometimes allow payment plans, where it is not a loss to the city but not such a hardship for the citizen. Noted it would be difficult to totally waive as almost every person that comes through the door can have some kind of hardship, they do try to work with them and do not believe it has been an issue here and cannot anticipate a situation ever where the city just simply said; I am sorry we cannot do anything for you.

Commissioner Preston Hicks asked if there were any others here to speak for or against this amendment, seeing none he called this public hearing to a close and would entertain a motion.

MOTION BY COMMISSIONER MORRIS, SUPPORTED BY COMMISSIONER GODFREY TO APPROVE THE AMENDMENTS AS PRESENTED, INCLUDING CHANGES DISCUSSED TODAY INCLUDING ORDINANCE CHAPTER 1290 "SPECIAL LAND USES"; ALSO TO INCLUDE THE ADDITIONAL PAGES HANDED OUT TODAY AND THE CHANGE IN THE NUMBERING OF CHAPTER 1290.05 TO 1290.06 AND CHANGE THE WORD COMPENSATION TO CONSIDERATION IN CHAPTER 1230.06 (32) AS RECOMMENDED BY CITY ATTORNEY'S OFFICE. A ROLL CALL VOTE WAS TAKEN: ALL IN FAVOR; NONE OPPOSED; MOTION APPROVED.

7. Old Business:

- A. Requested Ordinance Amendment to allow residential in all zoning districts:** Ms. Christine Hilton noted that Commissioner Stetler is not in attendance today and asked if the

Planning Commission would consider postponing this item until Commissioner Stetler is present as this item is per his request.

MOTION BY COMMISSIONER GODFREY, SUPPORTED BY COMMISSIONER BARKER TO POSTPONE DISCUSSION REGARDING ORDINANCE AMENDMENT TO ALLOW RESIDENTIAL IN ALL ZONING DISTRICTS UNTIL THE NEXT PLANNING COMMISSION MEETING.

A VOTE WAS TAKEN: ALL IN FAVOR; NONE OPPOSED; MOTION APPROVED.

- B. Updated Department Project List:** Ms. Hilton referenced the document noting the pending projects as of May 17, 2011 and the changes to projects/priority of projects from the previous list done in March 2011, with Billboard Sign Survey and Zoning Ordinance Amendments regarding Group Day Care Homes and Medical Marihuana Act as being a top priority.

Commissioner Hicks stated staff have done a great job of giving feed back to them on priorities and have been consistent to work along those priorities, noted that things will emerge and when items are added it throws off the priorities. Stated they need to have a process for items that are brought before this body and voted on and put it into play, give consideration of the other items that have been prioritized by the City and need to trust their judgment. Said he appreciates their work and for them to help; they need to figure out how to add items to the priority list in a way that is mindful of all that is going on and is respectful of them. Thanked everyone for listening.

Commissioner Godfrey noted that on the evening news the Medical Marihuana Law has caused other communities to struggle and not just the City of Battle Creek; asked for a brief overview of what our next steps are for Battle Creek. Ms. Susan Bedsole stated that the moratorium is nearing an end and that in the next few days there will be a synopsis of what has happened to-date legally through the court system for the last 6 months and will be providing information to extend the moratorium or make a decision and they will ask the City Commission to approve with minor changes.

Commissioner Godfrey asked if there had been any sufficient court cases that would give any guidance in making a decision with this maverick law. Ms. Bedsole stated there had been some, but not clear and that for instance the activity for the compassion clubs is difficult and most municipalities are in agreement with the City of Battle Creek and are more restrictive.

Ms. Jill Steele noted that Commissioner Morris brought up the Federal Laws saying it is illegal not a ruling and is still working their way through the courts and that the DEA have requested a list of persons who have received the medical marihuana license.

Ms. Bedsole stated legislature has also just introduced a few bills and made some changes on the technical side to help clarify the administrative side; for example: releasing of records to the law enforcement. Noted there will be more decisions made in the next two weeks on if they will be extending the moratorium or moving forward with a new ordinance.

Commissioner Hicks asked regarding new items being added to the table; if it would be fair and appropriate for the commission or commissioner to make the case for it at the Planning Commission meeting to move an item up on the priority list or should it be done with the City Planning department staff to address what is added.

Commissioner Morris stated they need to make the decision here and then pass along to the Planning department staff. Ms. Bedsole noted it would not be good to have a Planning Commissioner add items without a consensus of the entire group and unfair to have staff start the work. Stated you need to make certain there is at least consensus to investigate and go further on a topic from the entire commission versus doing two months of work for naught.

Commissioner Hick's feels that should be the procedure and that no one person should bring an item to the table without the consensus of the entire planning commission member's approval.

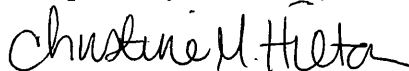
Ms. Bedsole noted the planning commissioners should not feel there is a closed door and they cannot bring items to the staff; they need to share in order to see what it is going to entail to figure out or what it will take to solve that issue and then bring to the commission to deal with or get resolved.

Commissioner Barker as an example made reference to the signs along I-94 when a representative from one of the petitioners had volunteered to re-write our statue during one of their meetings. Stated if he re-writes the statue what would be his protocol for sheparding it through the process and would it come before the Planning Commission or City Commission.

Ms. Hilton noted that with this most recent request, even though they had talked about it a few times; the format was to have the commissioner submit something in writing to say what the project would be and what the perceived problem was; she then discussed it with the commissioner and noted her perception of it and presented it to the Planning Commission for their viewpoint. Said even if it was not discussed at this month's meeting; the commission can still review for possibly adding to the list. Stated maybe this can be the process so it does not take up a lot of time.

8. **New Business:** None
9. **Comments by the Public:** None
10. **Comments by the Staff and Commission Members:** None
11. **Adjournment:** The meeting adjourned at 5:14 P.M.

Respectfully Submitted,



Christine M. Hilton, AICP

Executive Secretary, Planning Commission